

FIRST REGULAR SESSION

HOUSE BILL NO. 399

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES RIDDLE (Sponsor), WILSON, RHOADS, PIKE, HINSON,
CONWAY (104), HIGDON, PHILLIPS AND HICKS (Co-sponsors).

1242H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 77.046, 78.340, 79.240, 80.420, 84.120, 84.430, 84.490, 84.830, 85.551, 106.010, 106.270, and 590.080, RSMo, and to enact in lieu thereof twelve new sections relating to the removal of non-elected chief law enforcement officers.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 77.046, 78.340, 79.240, 80.420, 84.120, 84.430, 84.490, 84.830, 85.551, 106.010, 106.270, and 590.080, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 77.046, 78.340, 79.240, 80.420, 84.120, 84.430, 84.830, 85.551, 106.010, 106.270, 106.273, and 590.080, to read as follows:

77.046. **1.** Upon the adoption of a city administrator form of government, the governing body of the city may provide that all other officers and employees of the city, except elected officers, shall be appointed and discharged by the city administrator, but the governing body may make reasonable rules and regulations governing the same.

2. Nothing in this section shall be construed to authorize the city to remove or discharge any chief, as that term is defined in section 106.273.

78.340. **1.** Before entering upon the duties of their office each of said commissioners shall take and subscribe an oath, which shall be filed and kept in the office of the city clerk, to support the Constitution of the state of Missouri and to obey the laws and aim to secure and maintain an honest and efficient force free from partisan distinction or control, and to perform the duties of his office to the best of his ability.

2. Nothing in this section shall be construed to authorize the commissioners to remove or discharge any chief, as that term is defined in section 106.273.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

79.240. 1. The mayor may, with the consent of a majority of all the members elected to the board of aldermen, remove from office, for cause shown, any elective officer of the city, such officer being first given opportunity, together with his witnesses, to be heard before the board of aldermen sitting as a board of impeachment. Any elective officer, including the mayor, may in like manner, for cause shown, be removed from office by a two-thirds vote of all members elected to the board of aldermen, independently of the mayor's approval or recommendation. The mayor may, with the consent of a majority of all the members elected to the board of aldermen, remove from office any appointive officer of the city at will, and any such appointive officer may be so removed by a two-thirds vote of all the members elected to the board of aldermen, independently of the mayor's approval or recommendation. The board of aldermen may pass ordinances regulating the manner of impeachments and removals.

2. **Nothing in this section shall be construed to authorize the mayor, with the consent of the majority of all the members elected to the board of aldermen, or the board of aldermen by a two-thirds vote of all its members, to remove or discharge any chief, as that term is defined in section 106.273.**

80.420. 1. The policemen of the town, in the discharge of their duties, shall be subject to the orders of the marshal only as chief of police; but any marshal, assistant marshal or policeman may be instantly removed from his office by the board of trustees at a regular or called meeting, for any wanton neglect of duty.

2. **Nothing in this section shall be construed to authorize the board of trustees to remove or discharge any chief, as that term is defined in section 106.273.**

84.120. 1. No person shall be appointed or employed as policeman, turnkey, or officer of police who shall have been convicted of, or against whom any indictment may be pending, for any offense, the punishment of which may be confinement in the penitentiary; nor shall any person be so appointed who is not of good character, or who is not a citizen of the United States, or who is not able to read and write the English language, or who does not possess ordinary physical strength and courage. The patrolmen and turnkeys hereafter appointed shall serve while they shall faithfully perform their duties and possess mental and physical ability and be subject to removal only for cause after a hearing by the boards, who are hereby invested with the jurisdiction in the premises.

2. The board shall have the sole discretion whether to delegate portions of its jurisdiction to hearing officers. The board shall retain final and ultimate authority over such matters and over the person to whom the delegation may be made. In any hearing before the board under this section, the member involved may make application to the board to waive a hearing before the board and request that a hearing be held before a hearing officer.

15 3. Nothing in this section or chapter shall be construed to prohibit the board of police
16 commissioners from delegating any task related to disciplinary matters, disciplinary hearings,
17 or any other hearing or proceeding which could otherwise be heard by the board or concerning
18 any determination related to whether an officer is able to perform the necessary functions of the
19 position. Tasks related to the preceding matter may be delegated by the board to a hearing
20 officer under the provisions of subsection 4 of this section.

21 4. (1) The hearing officer to whom a delegation has been made by the board may, at the
22 sole discretion of the board, perform certain functions, including but not limited to the following:

23 (a) Presiding over a disciplinary matter from its inception through to the final hearing;

24 (b) Preparing a report to the board of police commissioners; and

25 (c) Making recommendations to the board of police commissioners as to the allegations
26 and the appropriateness of the recommended discipline.

27 (2) The board shall promulgate rules, which may be changed from time to time as
28 determined by the board, and shall make such rules known to the hearing officer or others.

29 (3) The board shall at all times retain the authority to render the final decision after a
30 review of the relevant documents, evidence, transcripts, videotaped testimony, or report prepared
31 by the hearing officer.

32 5. Hearing officers shall be selected in the following manner:

33 (1) The board shall establish a panel of not less than five persons, all who are to be
34 licensed attorneys in good standing with the Missouri Bar. The composition of the panel may
35 change from time to time at the board's discretion;

36 (2) From the panel, the relevant member or officer and a police department
37 representative shall alternatively and independently strike names from the list with the last
38 remaining name being the designated hearing officer. The board shall establish a process to be
39 utilized for each hearing which will determine which party makes the first strike and the process
40 may change from time to time;

41 (3) After the hearing officer is chosen and presides over a matter, such hearing officer
42 shall become ineligible until all hearing officers listed have been utilized, at which time the list
43 shall renew, subject to officers' availability.

44 **6. Nothing in this section shall be construed to authorize the board of police**
45 **commissioners to remove or discharge any chief, as that term is defined in section 106.273.**

84.430. 1. The board shall hear all complaints or charges filed against any member of
2 the police department. All complaints or charges filed by persons other than the commissioners
3 or police officers shall be verified by the oath of the person filing such complaints or charges.
4 The board may at any time order the discharge of a specified number of police officers for the
5 reason that in the opinion of the board, the police force is larger than the interests of the public

6 demand or that there is insufficient money to pay the expenses of maintaining the police force
7 as then organized; and in such cases it shall not be necessary to file any complaint or charges or
8 to permit a hearing by the board of the policemen or police officers to be removed; but
9 policemen and police officers so dismissed shall be placed at the top of the suitable eligible lists,
10 and when vacancies so created shall be filled the policemen or police officers thus removed shall,
11 if they so desire, be reappointed to fill such vacancies in the order in which such policemen or
12 police officers were removed.

13 2. Any member of the board shall have power to summon and compel the attendance of
14 witnesses before the board and the production of books and papers before them whenever it may
15 be necessary for the more effective discharge of the board's duties and responsibilities. Any
16 member of the board or the secretary of the board shall have the power to administer oaths or
17 affirmations to any person appearing or called before said board.

18 **3. Nothing in this section shall be construed to authorize the board to remove or**
19 **discharge any chief, as that term is defined in section 106.273.**

84.830. 1. No person shall solicit orally, or by letter or otherwise, or shall be in any
2 manner concerned in soliciting, any assessment, contribution, or payment for any political
3 purpose whatsoever from any officer or employee in the service of the police department for such
4 cities or from members of the said police board. No officer, agent, or employee of the police
5 department of such cities shall permit any such solicitation in any building or room occupied for
6 the discharge of the official duties of the said department. No officer or employee in the service
7 of said police department shall directly or indirectly give, pay, lend, or contribute any part of his
8 salary or compensation or any money or other valuable thing to any person on account of, or to
9 be applied to, the promotion of any political party, political club, or any political purpose
10 whatever.

11 2. No officer or employee of said department shall promote, remove, or reduce any other
12 official or employee, or promise or threaten to do so, for withholding or refusing to make any
13 contribution for any political party or purpose or club, or for refusal to render any political
14 service, and shall not directly or indirectly attempt to coerce, command, or advise any other
15 officer or employee to make any such contribution or render any such service. No officer or
16 employee in the service of said department or member of the police board shall use his official
17 authority or influence for the purpose of interfering with any election or any nomination for
18 office, or affecting the result thereof. No officer or employee of such department shall be a
19 member or official of any committee of any political party, or be a ward committeeman or
20 committeewoman, nor shall any such officer or employee solicit any person to vote for or against
21 any candidate for public office, or "poll precincts" or be connected with other political work of
22 similar character on behalf of any political organization, party, or candidate. All such persons

23 shall, however, retain the right to vote as they may choose and to express their opinions on all
24 political subjects and candidates.

25 3. No person or officer or employee of said department shall affix any sign, bumper
26 sticker or other device to any property or vehicle under the control of said department which
27 either supports or opposes any ballot measure or political candidate.

28 4. No question in any examination shall relate to political or religious opinions or
29 affiliations, and no appointment, transfer, layoff, promotion, reduction, suspension, or removal
30 shall be affected by such opinions or affiliations.

31 5. No person shall make false statement, certification, mark, rating, or report with regard
32 to any tests, certificate, or appointment made under any provision of sections 84.350 to 84.860
33 or in any manner commit or attempt to commit any fraud preventing the impartial execution of
34 this section or any provision thereof.

35 6. No person shall, directly or indirectly, give, render, pay, offer, solicit, or accept any
36 money, service, or other valuable consideration for or on account of any appointment, proposed
37 appointment, promotion to, or any advancement in, a position in the service of the police
38 departments of such cities.

39 7. No person shall defeat, deceive, or obstruct any person in his right to examination,
40 eligibility, certification, appointment or promotion under sections 84.350 to 84.860, or furnish
41 to any person any such secret information for the purpose of affecting the right or prospects of
42 any person with respect to employment in the police departments of such cities.

43 8. Any officer or any employee of the police department of such cities who shall be
44 found by the board to have violated any of the provisions of this section shall be discharged
45 forthwith from said service. It shall be the duty of the chief of police to prefer charges against
46 any such offending person at once. Any member of the board or of the common council of such
47 cities may bring suit to restrain payment of compensation to any such offending officer or
48 employee and, as an additional remedy, any such member of the board or of the common council
49 of such cities may also apply to the circuit court for a writ of mandamus to compel the dismissal
50 of such offending officer or employee. Officers or employees discharged by such mandamus
51 shall have no right of review before the police board. Any person dismissed or convicted under
52 this section shall, for a period of five years, be ineligible for appointment to any position in the
53 service of the police department of such cities or the municipal government of such cities. Any
54 persons who shall willfully or through culpable negligence violate any of the provisions of this
55 section may, upon conviction thereof, be punished by a fine of not less than fifty dollars and not
56 exceeding five hundred dollars, or by imprisonment for a time not exceeding six months, or by
57 both such fine and imprisonment.

58 **9. Nothing in this section shall be construed to authorize the board to remove or**
59 **discharge any chief, as that term is defined in section 106.273.**

85.551. 1. In cities of the third class which shall not have adopted the merit system
2 police department provided for in sections 85.541 to 85.571, the marshal shall be the chief of
3 police, and there also may be one assistant marshal, who shall serve for a term of one year and
4 who shall be deputy chief of police; such number of regular policemen as may be deemed
5 necessary by the council for the good government of the city, who shall serve for terms of one
6 year; and such number of special policemen as may be prescribed by ordinance, to serve for such
7 time as may be prescribed by ordinance.

8 2. The manner of appointing the assistant marshal and all policemen of the city shall be
9 prescribed by ordinance. The council shall also, by ordinance, provide for the removal of any
10 marshal, assistant marshal or policeman guilty of misbehavior in office.

11 **3. Nothing in this section shall be construed to authorize the council to remove or**
12 **discharge any chief, as that term is defined in section 106.273.**

106.010. 1. The governor shall have power and he is hereby authorized to remove from
2 office, without assigning any other reason therefor, any appointive state official required by law
3 to be appointed by the governor, whenever in his opinion such removal is necessary for the
4 betterment of the public service, but the governor may, at his discretion, in any order of removal
5 which he may make under authority of this section, assign additional and more specific reasons
6 for such removal.

7 **2. Nothing in this section shall be construed to authorize the governor to remove**
8 **or discharge any chief, as that term is defined in section 106.273.**

106.270. 1. If any official against whom a proceeding has been filed, as provided for in
2 sections 106.220 to 106.290, shall be found guilty of failing personally to devote his time to the
3 performance of the duties of such office, or of any willful, corrupt or fraudulent violation or
4 neglect of official duty, or of knowingly or willfully failing or refusing to do or perform any
5 official act or duty which by law it is made his duty to do or perform with respect to the
6 execution or enforcement of the criminal laws of the state, the court shall render judgment
7 removing him from such office, and he shall not be elected or appointed to fill the vacancy
8 thereby created, but the same shall be filled as provided by law for filling vacancies in other
9 cases. All actions and proceedings under sections 106.220 to 106.290 shall be in the nature of
10 civil actions, and tried as such.

11 **2. Nothing in this section shall be construed to authorize the removal or discharge**
12 **of any chief, as that term is defined in section 106.273.**

106.273. 1. For the purposes of this section, the following terms shall mean:

2 (1) “Chief”, any non-elected chief law enforcement officer of any political
3 subdivision;

4 (2) “Just cause”, exists when a chief:

5 (a) Is unable to perform his or her duties with reasonable competence or
6 reasonably safety as a result of a mental condition, including alcohol or substance abuse;

7 (b) Has committed any act, while engaged in the performance of his or her duties,
8 that constitutes a reckless disregard for the safety of the public or another law enforcement
9 officer;

10 (c) Has caused a material fact to be misrepresented for any improper or unlawful
11 purpose;

12 (d) Acts in a manner for the sole purpose of furthering his or her self-interest, or
13 in a manner inconsistent with the interests of the public of the chief’s governing body; or

14 (e) Has been found to have violated any law, statute, or ordinance which constitutes
15 a felony.

16 2. A chief shall be subject to removal from office or employment by the appointing
17 authority or the governing body of the political subdivision employing the chief if:

18 (1) The governing body of the political subdivision employing the chief issues a
19 written notice to the chief whose removal is being sought no fewer than ten business days
20 prior to the meeting at which his or her removal will be considered;

21 (2) The chief has been given written notice as to the governing body’s intent to
22 remove him or her. Such notice shall include:

23 (a) Charges specifying just cause for which removal is sought;

24 (b) A statement of facts that are alleged to constitute just cause for the chief’s
25 removal; and

26 (c) The date, time, and location of the meeting at which the chief’s removal will be
27 considered.

28 (3) The chief is given an opportunity to be heard before the board, together with
29 any witnesses, evidence and counsel of his or her choosing; and

30 (4) The board, by two-thirds majority vote, finds just cause for removing the chief.

31 3. Upon the satisfaction of the removal procedure under subsection 2 of this section,
32 the chief shall be immediately removed from his or her office, shall be relieved of all duties
33 and responsibilities of said office, and shall be entitled to no further compensation or
34 benefits not already earned, accrued, or agreed upon.

35 4. Any chief removed pursuant to subsection 3 of this section shall be issued a
36 written notice of the grounds of his or her removal within fourteen calendar days of the
37 removal.

590.080. 1. The director shall have cause to discipline any peace officer licensee who:

- (1) Is unable to perform the functions of a peace officer with reasonable competency or reasonable safety as a result of a mental condition, including alcohol or substance abuse;
- (2) Has committed any criminal offense, whether or not a criminal charge has been filed;
- (3) Has committed any act while on active duty or under color of law that involves moral turpitude or a reckless disregard for the safety of the public or any person;
- (4) Has caused a material fact to be misrepresented for the purpose of obtaining or retaining a peace officer commission or any license issued pursuant to this chapter;
- (5) Has violated a condition of any order of probation lawfully issued by the director;

or

- (6) Has violated a provision of this chapter or a rule promulgated pursuant to this chapter.

2. When the director has knowledge of cause to discipline a peace officer licensee pursuant to this section, the director may cause a complaint to be filed with the administrative hearing commission, which shall conduct a hearing to determine whether the director has cause for discipline, and which shall issue findings of fact and conclusions of law on the matter. The administrative hearing commission shall not consider the relative severity of the cause for discipline or any rehabilitation of the licensee or otherwise impinge upon the discretion of the director to determine appropriate discipline when cause exists pursuant to this section.

3. Upon a finding by the administrative hearing commission that cause to discipline exists, the director shall, within thirty days, hold a hearing to determine the form of discipline to be imposed and thereafter shall probate, suspend, or permanently revoke the license at issue. If the licensee fails to appear at the director's hearing, this shall constitute a waiver of the right to such hearing.

4. Notice of any hearing pursuant to this chapter or section may be made by certified mail to the licensee's address of record pursuant to subdivision (2) of subsection 3 of section 590.130. Proof of refusal of the licensee to accept delivery or the inability of postal authorities to deliver such certified mail shall be evidence that required notice has been given. Notice may be given by publication.

5. Nothing contained in this section shall prevent a licensee from informally disposing of a cause for discipline with the consent of the director by voluntarily surrendering a license or by voluntarily submitting to discipline.

6. The provisions of chapter 621 and any amendments thereto, except those provisions or amendments that are in conflict with this chapter, shall apply to and govern the proceedings of the administrative hearing commission and pursuant to this section the rights and duties of the parties involved.

37 **7. Nothing in this section shall be construed to authorize the director to remove or**
38 **discharge any chief, as that term is defined in section 106.273.**

2 [84.490. 1. The chief of police shall serve during the pleasure of the
3 board. In case the board determines to remove or demote the chief of police, he
4 shall be notified in writing. Within ten days after receipt of such notice, the chief
5 may, in writing, file with the secretary of the board of police commissioners,
6 demand and he shall receive a written statement of the reasons for such removal
7 or demotion, and a hearing thereon at a public meeting of the board within ten
8 days after the chief files such notice. The chief may be suspended from office
9 pending such hearing. The action of the board in suspending, removing or
10 demoting the chief of police shall be final and not subject to review by any court.

11 2. The board may, in case of and during the absence or disability of the
12 chief, designate a qualified police officer who shall serve as acting chief and
13 perform the duties of the office. No man shall serve as acting chief who has not
the qualifications required for the position of chief.]

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